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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/898,686	07/02/2001	William Elmer Kish		1760

7590 05/05/2005

WILLIAM E. KISH
1738 St. Andrews Drive
Moraga, CA 94556

EXAMINER

LASTRA, DANIEL

ART UNIT	PAPER NUMBER
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3622

DATE MAILED: 05/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/898,686

Applicant(s)

KISH, WILLIAM ELMER

Examiner

DANIEL LASTRA

Art Unit

3622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-14 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 11-14 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____

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DETAILED ACTION

1. Claims 11-14 have been examined. Application 09/898,686 has a filing date 07/02/2001.

Response to Amendment

2. In response to Non Final Rejection filed 12/10/04, the Applicant filed a non-responsive Amendment (01/31/2005) due to the Applicant submitting two different sets of claims. Then, the same non-responsive amendment was again filed 02/03/2005. In response to a Telephone Interview (02/11/2005), the Applicant filed a third amendment (02/18/2005) where the Applicant cancel claims 1-10 and added new claims 11-14. Then, Applicant sent another Amendment (03/02/2005), which amended the specification. However, Applicant also submitted a non-responsive amendment (03/02/05) by presenting new claims 1-4, which were already previously canceled. For purpose of art rejection, the Examiner would respond to amendment filed 02/18/05, where Applicant cancel claims 1-10 and added new claims 11-14.

Claim Objections

3. Claims 12-14 are objected to because of the following informalities: Claims 12-14 recites dependence to cancel claim 1. For purpose of art rejection, claims 12-14 are made dependent to claim 11. Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 3622

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 11 and 13-14 are rejected under 35 U.S.C. 102(e) as being anticipated by O'Brien (US 6,587,831).

As per claim 11, O'Brien teaches:

A system using an employee action to generate an earning comprising:

a. plurality of client computers connected to a network upon which an employee identification profile is entered and transmitted to a server computer (see column 2, lines 10-15; column 4, lines 10-27);

b. a server computer connected to the network, which performs the steps of:
receiving the employee identification profile (see column 4, lines 25-30);
generating points based upon an employee action (see column 9, lines 1-5);
exchanging points between employees (see column 9, lines 1-5); and
updating the employee identification profile based upon the action, earning or point conversion (see column 8, lines 10-15).

As per claim 13, O'Brien teaches:

The system of claim 11, which performs the steps further:

a work shift has a point value (see column 9, lines 1-5);
exchanging work shifts having point value, which the employee can offer points in exchange (see column 8, lines 10-15).

As per claim 14, O'Brien teaches:

Art Unit: 3622

The system of claim 11, which performs the steps further:

Customer identification profile (see column 4, lines 10-27);

Providing employee assignment of customers (see column 7, lines 1-10);

Recording customer preference, request and frequency (see column 7, lines 10-57);

Stores the assignment, action, request, frequency in a database (see column 7, lines 3-57).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over O'Brien (US 6,587,831) in view of Eggleston (US 6,061,660).

As per claim 12, O'Brien teaches:

The system of claim 1, which performs the steps further:

Selling or purchasing points (see column 8, lines 10-15) but fails to teach converting points to employee units where each unit has value and the employee selects from the group of equity, cash, product and services. However, Eggleston teaches an employer incentive program where employees are awarded with points or prizes for certain action performed by said employees, such as attendance record and where said prizes include merchandise, cash, services, discounts, coupons or points

Art Unit: 3622

(see Eggleston column 31, lines 33-50; column 35, lines 20-35; column 7, lines 45-50). Eggleston does not expressly mention equity. However, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that an equity prize would be another incentive prize, besides cash, merchandise or points, that employers would give to users that participate and win in said employers' incentive programs. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that O'Brien would award points to employees based upon said employees' work shift action and said employees would use said awarded points to obtain prizes, as taught by Eggleston. Employees would be more willing to accept a change in their work shift schedules or to swap shifts as long as said employees are remunerated with prizes or points for accepting said change.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

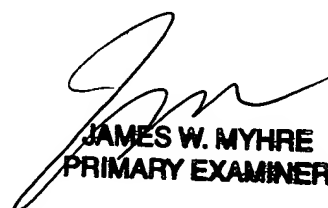
Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 571-272-6720. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ERIC W STAMBER can be reached on 571-272-6724. The right-fax of the Examiner is 571-273-6720.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DL

Daniel Lastra
April 26, 2005


JAMES W. MYHRE
PRIMARY EXAMINER